IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5139 OF 2003

Vasantdada Shetkari Sahakari Bank Ltd. .. Petitioners

Vs.

M/s.Kuldeep Builders & Ors. ..Respondents

Mr.S.S.Patwardhan for the petitioners

Mr.Kishor Tembe for the respondent no.5

CORAM : S.U.KAMDAR, J
DATED : 9TH DECEMBER, 2005

P.C.:

1. The present petition challenges the levy of an attachment on the premises which has been purchased by the petitioners under two agreements from the borrower. Petitioners have purchased the first floor under agreement dt.21.2.97 and Ground and Mezzanine Floor by agreement dt.1.6.00. The price which has been agreed to be paid to the borrower in respect of 1st floor is Rs.36,40,000/- and in respect of Ground and Mezzanine Floor is Rs.1,22,63,290/-.

2. Respondent no.5 bank who is holding the recovery certificate as against respondent no.1 to 4 has sought to execute recovery certificate against the said property. Petitioners are in possession of the said property by way of part performance under the aforesaid two agreements. It is not in dispute that the petitioners paid an amount of Rs.46,78,319.17 to the respondent no.5 bank towards their claim under the said recovery certificate. However, the learned counsel for respondent no.5 states that irrespective of receipt of the said amount since respondent no.5 bank is holding the recovery certificate for more than one crore they will be entitled to execute recovery certificate even against the first floor premises. It has been contended by the learned counsel for the respondent no.5 that as far as 1st floor premises is concerned the agreement which was entered into was not accepted by the Income Tax Authorities and therefore the petitioner bank have no right title and interest in respect of the said property and they are entitled to execution of recovery certificate even in respect of the said premises.

3. In my opinion, having received a sum of Rs.46,78,319.17 as against value of First floor premises of Rs.36,40,000, it is not open for the respondent no.5 bank to continue to execute warrant of attachment as against the said 1st floor premises. Apart therefrom, right of the petitioner bank cannot be affected in respect of the said property because agreement was entered into much prior to the issuance of certificate and respondent no.5 bank is not entitled to recover twice over the amount in respect of the said first floor premises. I am of the opinion that attachment in so far as first floor premises is concerned requires to be raised. Accordingly, I direct that attachment in respect of first floor premises of the bank will stand raised. However, it is open to the bank to execute the recovery certificate against all other properties of the borrowers. Petition disposed of accordingly. There shall be no order as to costs. The learned counsel for respondent no.5 seeks stay. Stay granted for two weeks.